

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Deutsche Bank National Trust  
Company as Trustee for HSI  
Asset Securitization Corporation  
2006-OPT2 Mortgage Pass-  
Through Certificates,  
Series 2006-OPT2,

Case No. 2:07-cv-00196

Plaintiff,

Magistrate Judge Kemp

v.

James Carl Winnenberg, et al.,  
Defendants.

ORDER

This mortgage foreclosure case is before the Court to consider a proposed order confirming the foreclosure sale. For the following reasons, the Court declines to do so at this time, and will direct plaintiff to address certain issues which may affect the Court's jurisdiction.

The complaint in this case was filed on March 7, 2007. It recited that plaintiff, Deutsche Bank National Trust Company, was the owner of the note and mortgage in question. The original mortgagee and note holder was Option One Mortgage. An affidavit of foreclosure was also filed on March 7, 2007, making the same representations. That affidavit was executed on March 5, 2007.

Subsequent filings in the case create an issue about whether these representations were true when made. The assignment of the mortgage to plaintiff appears not to have been executed by the assignor until March 13, 2007, and it was not recorded until March 28, 2007. See Doc. #10, Notice of Filing of Endorsement to Title Commitment (showing the March 28, 2007 recording date); Doc. #12, Notice of Filing Assignment of Mortgage (showing the

March 13, 2007 execution date). Thus, Deutsche Bank may have had no legally cognizable interest in either the note or the mortgage on the date that the complaint was filed.

Other Judges of this Court have identified this sequence of events as problematic. For example, both Judge Holschuh and Judge Watson have treated it as a jurisdictional issue. See, e.g., In re Foreclosure Cases, Case No. 2:07-cv-166 et al., (Opinion and Order of December 27, 2007) (Holschuh, J.); In re Foreclosure Cases, Case No. 2:07-cv-93 at al. (Order to Show Cause of February 19, 2008) (Watson, J.). Judge Abel has suggested that there may have been an issue of violating Fed.R.Civ.P. 11 if the allegations of the complaint were not true when made. See, e.g., Deutsche Bank Trust Company Americas v. Lester, Case No. 2:07-cv-786 (Order of February 29, 2008).

The purpose of this order is to give the plaintiff a chance to address these issues, which have not been raised before in this particular case. Plaintiff shall show cause within fifteen days why the Court should not either dismiss the case on jurisdictional grounds and/or consider whether some sanction might be appropriate if the complaint and the accompanying affidavit contain false statements. Pending such response, the Court will hold any approval of the foreclosure sale in abeyance.

/s/ Terence P. Kemp  
United States Magistrate Judge